

Bitewelign (Migration) [2019] AATA 2628 (2 May 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Mrs Rahel Aregay Bitewelign

VISA APPLICANTS: Mr Getnet Teklay Haylu
Miss Azmera Mengstu Hadush
Mr Aron Mengstu Hadush
Mr Alula Mengstu Hadush

CASE NUMBER: 1618668

DIBP REFERENCE(S): BCC2015/1828155

MEMBER: Simone Burford

DATE: 2 May 2019

PLACE OF DECISION: Perth

DECISION: The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 02 May 2019 at 12:26pm

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – insufficient evidence of relationship – invalid marriage at time of application – review applicant under 18 – criteria to assess is for de facto relationship – inconsistent and limited evidence – decision under review affirmed

LEGISLATION

Marriage Act 1961, s 88D(2)(b)
Migration Act 1958 (Cth), s 5F, 5CB, 65
Migration Regulations 1994, Schedule 2, cls 309.211(2), 309.221, 309.321(a), rr 1.09A(3), 1.15A(3), 2.03A

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 4 October 2016 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named visa applicant (the visa applicant), Mr Getnet Teklay Haylu, applied for the visa on 4 June 2015 on the basis of his relationship with the sponsor, the review applicant, Ms Rahel Aregay Bitewelign. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. Included in the application as secondary applicants are Mr Alula Mengstu Hadush, Mr Aron Mengstu Hadush and Miss Azmera Mengstu Hadush.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211(2) because the delegate was not satisfied that the visa applicant was the spouse of the sponsor, the review applicant, as defined under s.5F of the Act.
5. The review applicant appeared before the Tribunal on 8 May 2018 to give evidence and present arguments. On that date the Tribunal discussed the issues arising in the application with the review applicant. However, attempts to contact the visa applicant on the telephone were unsuccessful and the Tribunal adjourned the hearing to another date without taking evidence from the review applicant.
6. The hearing was relisted for 24 July 2018. On that date the review applicant appeared again before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant by telephone from Ethiopia. The Tribunal indicated in the invitation to the adjourned hearing that it may wish to take evidence from Miss Azmera Mengstu Hadush. The Tribunal received oral evidence from Miss Hadush by telephone from Ethiopia.
7. Both hearings were conducted with the assistance of an interpreter in the English and Tigrinya languages.
8. The review applicant was not represented in relation to her application.
9. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. The issue in the present case is whether the visa applicant is the spouse or de facto partner of the sponsor as defined under s.5F and s.5CB of the Act.

Whether the parties are in a spouse or de facto relationship

11. Clause 309.211(2) and cl.309.221 require that at the time the visa application was made, and at the time of this decision the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the

present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.

12. "Spouse" is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act: s.5F(2)(a).
13. Parties who are not married to each other under a marriage that is valid for the purposes of the Act cannot satisfy an essential requirement of a spousal relationship, but may meet the criteria for grant of a visa on the basis of being in a de facto relationship as defined in s.5CB of the Act. A person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s.5CB(2).

Are the parties validly married?

14. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship.
15. At the commencement of the hearing, the Tribunal discussed with the review applicant the issue of the validity of the parties' marriage in 2013. This matter was also raised in the delegate's decision.
16. According to the visa application the parties were married on 11 January 2013 in Ethiopia. A copy of a Marriage Certificate in English and Tigrinya was provided. The certificate bears the date "02/05/05"; however, the date appears to be in the Ethiopian calendar and is not translated into the Gregorian calendar. The Tribunal accepts the date of the marriage as provided by the parties as 11 January 2013 under the Gregorian calendar. The certificate records the marriage of the visa applicant to the review applicant. The review applicant was born on 3 April 1995 and was not 18 years of age at the time of the marriage. At the time of the marriage the review applicant was visiting Ethiopia but was domiciled in Australia. While certain foreign marriages where a party is under 18 may be recognized as valid, this is not the case where one of the parties is domiciled in Australia. For foreign marriages involving a person not of marriageable age (i.e. under 18 years of age), if one of the parties was domiciled in Australia at the time of marriage, the marriage shall not be recognised as valid in Australia: s.88D(2)(b) of the *Marriage Act 1961*.¹ At the hearing the review applicant acknowledged she was not 18 years old at the time of that marriage.
17. The Tribunal finds on the evidence that the review applicant was under 18 years of age at the time the parties were married in Ethiopia on 11 January 2013. The Tribunal also finds on the evidence that the review applicant was domiciled in Australia at the time of that marriage. Accordingly, on the evidence, at the time of application the parties were not married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).
18. On the evidence before the Tribunal, the parties married again in Ethiopia in December 2017. The parties provided a copy of a document translated to be a Marriage Certificate, from the Civil Status Office of "Vital Events of the Democratic Republic of Ethiopia" for a marriage between the parties concluded on 24 December 2017 and registered on 23 January 2018 in Mekelle City, Ethiopia. By this time the review applicant was over the age of 18 years of age. The Tribunal has no information to suggest this was not a valid marriage under local law. On the evidence, the Tribunal finds that the parties are married to each

¹See also ss.10(2)(b), 11 and 12 of the *Marriage Act 1961*.

other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a) at the time of decision.

19. Consideration of requirements for de facto and spousal relationships

20. While the parties were validly married at the time of decision, the parties were not validly married to each other under a marriage that is valid for the purposes of the Act at the time the application was made. Accordingly, they cannot satisfy an essential requirement of a spousal relationship, but may meet the time of application criteria on the basis of being in a de facto relationship as defined in s.5CB of the Act.
21. As the Tribunal has found that the parties were validly married at the date of the decision it is necessary to consider whether the parties meet the requirements for a de facto relationship at the time the application was made and for a spousal relationship at the time of the decision. This issue was discussed with the review applicant at this hearing.
22. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3) of the Regulations for spousal relationships and r.1.09A(3) of the Regulations for de facto relationships. Both are extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) and r.1.09A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206. Additional criteria applying to de facto relationships are set out in r.2.03A of the Regulations.
23. In considering these issues and in reaching its decision the Tribunal has considered the mandatory factors in both r.1.09A(3) and r.1.15A(3) together.

Are the other requirements for a spousal or de facto relationship met?

24. The Tribunal has before it the Department's file relating to the visa applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, which was submitted by the review applicant with the application for review, and other material available to it including material submitted by the review applicant to the Tribunal including material submitted following the hearing.
25. The review applicant and the visa applicant both gave evidence at the hearing. The Tribunal questioned them at length about their relationship. The Tribunal took evidence regarding the development of their relationship, their relationship history, knowledge of each other's background and family history, financial, social and household aspects of their relationship and the nature of their commitment to each other. The Tribunal also took evidence from one of the secondary visa applicants, Miss Azmera Hadush who indicated she was about 20 years old at the time of the hearing.
26. The Tribunal had some concerns regarding inconsistencies in the testimony of the review applicant and visa applicant. The basis for these concerns is outlined further below. These concerns were put to the applicant following the hearing in accordance with s.359A of the Act.
27. The Tribunal expressed a concern at the hearing that there was little documentary evidence on the file to support the account of the relationship given by the parties particularly having regard to the length of time they claimed to have been in a relationship. The Tribunal discussed with the review applicant the fact that the delegate's decision raised the issue of the lack of supporting evidence as a basis for refusing the visa and the need for the review applicant to give careful consideration as to whether she wished to submit any other

evidence in support of the application before the Tribunal. The Tribunal gave the review applicant additional time following the second hearing to submit additional evidence. Some additional material was provided and this has been taken into account by the Tribunal in reaching its decision.

28. *Relationship background*

29. The visa applicant is a 45-year-old Ethiopian national. He has not been previously married. He claims to be the guardian of his niece and two nephews following the death of their parents. They are the secondary applicants for the visa. He also has a daughter from a previous relationship who lives with her mother. He has not seen her since 2014 and does not know where she is. She is not included as an applicant for the visa.
30. The review applicant is a 24-year-old Australian citizen. She was born in Ethiopia and migrated to Australia with her siblings in 2008. She has not been previously married and does not have any children.
31. The parties claim to have known each other since the review applicant was a child in Ethiopia as he was a friend of her older sister. According to the parties' unsigned statements to the Department, the visa applicant provided food and financial support to the review applicant's family prior to them moving to Australia. The decision record notes that the review applicant claims to have searched for the visa applicant on Facebook in 2011 and reconnected with him on Facebook. According to the delegate's decision, records of Facebook contact were requested by the Department during the interview with the visa applicant. No records of Facebook contact were provided. This was raised with the review applicant at the hearing. She indicated that she had records from Facebook but did not have them with her. The Tribunal indicated that it would provide additional time following the hearing for her to provide additional evidence should she choose to do so. The visa applicant indicated his Facebook account had been deleted and he didn't use it much after they made contact. No records of Facebook contact were provided following the hearing.
32. The review applicant travelled to Ethiopia in November 2012 and the visa applicant visited her in Axum for a week. He returned to his home in Shire and the review applicant visited him there. At the hearing the review applicant couldn't recall when the parties got engaged. Her statement to the Department indicated they were engaged on New Year's Eve, 31 December 2012. They were married in January 2013. They travelled together for around two weeks following the wedding and the review applicant returned to Australia on 25 February 2013.
33. The visa application was made on 4 June 2015 and refused on 4 October 2016.
34. The review applicant returned to Ethiopia on 25 November 2017 and the parties married again on 24 December 2017. The review applicant returned to Australia on 25 January 2018.

35. *Adverse material*

36. As noted above, the Tribunal had some concerns regarding the testimony of the review applicant and visa applicant. These concerns were put to the review applicant following the hearing, by letter dated 12 March 2019, in accordance with s.359A of the Act.
37. The particulars of the information were as follows:
 - The review applicant told the Tribunal that on her visit to Ethiopia in 2013 she did not stay at the visa applicant's house in Sira [sic: Shire]. However, the visa applicant told the Tribunal she stayed at the house for a few days after they were married in 2013.

- The visa applicant's niece, Azmera Hadush who is one of the secondary applicants, told the Tribunal that after the review applicant and visa applicant's second wedding in 2018 the review applicant stayed in Sira [sic: Shire] for a few days. The visa applicant told the Tribunal after the second wedding the review applicant stayed in Sira [sic: Shire] for three weeks.
- The review applicant told the Tribunal that the visa applicant's sister went to the parties' wedding in 2013. However, the visa applicant told the Tribunal that his sister was deceased.
- The review applicant told the Tribunal that she travelled to Ethiopia for two months in 2013 but Departmental movement records indicate that she was out of the country for three months at that time.
- The visa applicant told the Tribunal he contacted the review applicant's brother to ask permission to marry the review applicant. However, the review applicant told the Tribunal the visa applicant did not seek permission to marry as it was not required.
- The review applicant said she reconnected with the visa applicant after she looked for him on Facebook in 2011. However, the visa applicant told the Tribunal that he found the review applicant on Facebook and contacted her.

38. The review applicant replied on 18 March 2019 via email. She stated that on her visit to Ethiopia in 2013 she stayed in his hometown, Shire, but did not stay at the visa applicant's home because his niece and nephews lived there and there was not much privacy for them. She stated that the parties stayed together for three weeks but did not let the visa applicant's niece know so that they could have time alone together. They stayed at the visa applicant's house for a few days before the review applicant departed for Australia. This was when the visa applicant's niece was aware the review applicant was in Shire and why the niece provided different information. When the review applicant referred to the visa applicant's sister being at the wedding she was referring to the visa applicant's niece. The review applicant referred to the visa applicant's niece as his sister as in their culture "*we call our nieces like sisters*". The review applicant stated that with regard to whether permission had been sought to marry, the visa applicant did seek permission to marry as that is the tradition in their culture; however, the review applicant was not aware that he had done so until the hearing. In relation to their meeting on Facebook, the review applicant claims that the visa applicant misunderstood the question when he indicated that he had found the review applicant on Facebook rather than the other way round.

39. The Tribunal has considered the review applicant's responses to the material put to her at the hearing in the context of all the material before it in reaching a decision.

40. *Financial aspects*

41. The Tribunal has had regard to the evidence provided relating to the financial aspects of the relationship, including joint ownership of real estate or other major assets and any joint liabilities, the extent of any pooling of financial resources, especially in relation to major financial commitments, whether one person in the relationship owes any legal obligation in respect of the other and the basis of any sharing of the day-to-day household expenses.

42. The parties provided financial information which reflects their financial circumstances.

43. The parties do not have any significant joint assets or liabilities and there is no evidence that either person in the relationship owes any legal obligation in respect of the other.

44. The review applicant works as a nursing assistant in Australia. She is studying nursing. The visa applicant indicated at the hearing he was not aware how much she earned through her

job. The review applicant indicated the visa applicant sells vegetables for a living but she did not know how much he earned doing this work.

45. The visa applicant rents a home in Ethiopia. The review applicant was not aware how much the visa applicant paid in rent.
46. The review applicant testified that the parties do not pool resources for day-to-day expenses. She testified that when she is visiting the visa applicant in Ethiopia she pays for her hotel accommodation and her food herself.
47. The visa applicant indicated that the review applicant "sometimes" provides financial assistance to the visa applicant. Documents provided to the Department and Tribunal included records for money transfers from the review applicant to the visa applicant. The following receipts were provided for money transfers from the review applicant to the visa applicant:
 - a Western Union money transfer receipt from 20 February 2015 for AU\$350
 - a Western Union money transfer receipt from 2 March 2016 for AU\$1700
48. The following receipts were provided for money transfers from the review applicant to the secondary visa applicant, Miss Azmera Hadush:
 - a Western Union money transfer receipt of from 20 January 2014 for AU\$260
 - a Western Union money transfer receipt from 16 March 2016 AU\$470
 - A receipt was also provided for a Western Union money transfer on 12 December 2016 from Temit Tesfay Araya to the visa applicant for AU\$660.
49. There is limited evidence of the parties combining financial resources. The Tribunal accepts that the review applicant has provided some financial assistance to the visa applicant and his family evidenced by the money transfer receipts. However, given the parties claim to have been in relationship since 2013, the evidence of financial support is limited. In addition, the parties had no evidence of sharing living costs and financial resources when together in Ethiopia or otherwise. Further, the parties displayed little knowledge of each other's financial arrangements as may reasonably be expected of parties in a relationship of the length claimed by them.
50. The Tribunal notes that the parties reside in separate countries and recognises that this makes the pooling of resources and sharing of day-to-day expenses difficult. However, given the claimed length of the relationship it is reasonable to expect some evidence of sharing of financial costs, at least when the parties are together in the same country. In such circumstances it would be reasonable to expect that the parties would have some documentary evidence available regarding their financial arrangements while in Ethiopia or living separately. Such evidence has not been provided. Further, it would be reasonable to expect the parties to be familiar with their spouse or de facto partner's financial arrangements and circumstances. The parties displayed very limited knowledge of each other's financial circumstances at the hearing.
51. The Tribunal finds on the evidence that the parties' financial arrangements are not such that would indicate a genuine de facto relationship at the time of application and a genuine married relationship at the time of decision. However, having regard to the circumstances of the parties living separately during most of the relationship the Tribunal does not place significant weight on this.

52.

53. *Nature of the household*

54. The Tribunal has had regard to the evidence as to the nature of the household including joint responsibility for the care and support of children, the parties' living arrangements and any sharing of the responsibility for housework.
55. The parties have no children together. The visa applicant claims to be the guardian of his niece and two nephews who are the secondary applicants for the visa. The Tribunal notes that the visa applicant's niece claimed to be around 20 years old at the time of the hearing and is not a minor. The parties provided testimony that they have not spent more than a few days together at the home the visa applicant shares with the secondary applicants. Other than evidence of limited money transfers from the review applicant there is no evidence that the parties have shared responsibility for care of the children. The Tribunal finds on the evidence that the parties do not have joint responsibility for the care and support of any children.
56. The review applicant testified that that Miss Azmera Hadush cared for the visa applicant's nephews when he was travelling with the review applicant. The parties' evidence is that when they were together at the house, the housework and cooking were done by Azmera Hadush. The parties did not provide any evidence that they share responsibility for housework when together.
57. The review applicant lives with a friend in Australia. The property is leased in the name of the friend. The visa applicant rents a property in Ethiopia and lives with the secondary applicants.
58. On their own evidence, the parties have not lived together for longer than a few weeks during the period they have been married. They claimed to have travelled together in Ethiopia for several weeks and stayed in hotels during the first visit in 2012/2013 and to have spent several weeks staying at a hotel and then a rented property in Shire on the second visit in 2017/2018.
59. As they have not lived together in Ethiopia for longer than a few weeks at a time the parties have had limited opportunity to share their living arrangements. The Tribunal accepts they have not been able to establish a permanent joint household. Given their circumstances the Tribunal does not place significant weight on their current lack of a shared household. However, the Tribunal has concerns that they have spent very little time living together in Ethiopia when the review applicant was travelling there. These concerns included that the review applicant spent only two months of a three month visit to Ethiopia with the visa applicant, spending the remaining month in Addis Ababa renewing her Ethiopian passport. Given the very limited time the parties have been in the same country since they claimed to have commenced their relationship in late 2012, it is reasonable to expect they would have spent as much time as possible together when in the same country.
60. Further, the evidence suggests that rather than combine households when the review applicant is visiting Ethiopia, the parties have spent some time travelling together but very little time in the visa applicant's home and with his family, even when in his home town. Given that the parties claim to have been married since 2013 and the review applicant is sponsoring the visa applicant's family to come to Australia it is reasonable to expect that they would have spent time together as a household during her visits to Ethiopia.
61. The Tribunal finds on the evidence that the nature of the parties' household is not such that would indicate a genuine de facto relationship at the time of application and a genuine married relationship at the time of decision.

62. *Social aspects of the relationship*

63. The Tribunal has had regard to the evidence provided as to whether the parties represented themselves to others as being in a genuine de facto relationship and, now, as being married to each other, the opinion of their friends and acquaintances about the nature of the relationship and any basis on which the parties plan and undertake joint social activities.
64. The parties have provided limited supporting material of the social aspects of the relationship. They provided photographs which the review applicant identified as being from their first wedding including photographs in group settings and others with the visa applicant's family. They provided studio photographs of their second wedding, most featuring the visa applicant and the review applicant, with several showing a person the review applicant identified as the celebrant and two other friends of the parties. The photographs from the first wedding show them in a group setting with others and provide some evidence of joint social activity with others. However, the photographs only show a small number of people and judging from the clothing of the parties in the photos were taken on four separate occasions. As such, they offer limited evidence of joint social activity during the course of the relationship.
65. The parties claimed that they had a ceremony in 2013 for their first marriage which was held at a hotel in Mikelle. The review applicant claimed that around 50 people attended including one of her sisters and her niece. The Tribunal notes the review applicant indicated the visa applicant's sister was present and later said his sister, his niece and nephews were there. However, as noted in the information put to the review applicant in the letter of 12 March 2019, the visa applicant told the Tribunal his sister was deceased. In response the review applicant stated that when she said the visa applicant's sister was there she meant his niece. The Tribunal finds this response lacks credibility as the review applicant told the Tribunal the visa applicant's sister was at the wedding shortly before stating his niece and nephews were at the wedding. In the context of this discussion the Tribunal finds it unlikely that that review applicant would have referred to Miss Hadush as both the sister and the niece of the visa applicant within the same discussion providing an account of who had attended one event. The review applicant also claimed she had a friend attend the wedding but that she couldn't remember her friend's name. This casts further doubt on the credibility of her account of the first wedding. Although some time has elapsed since the wedding took place, the Tribunal does not accept that the review applicant would be confused about who had attended such a significant event as her wedding, particularly with respect to which family members attended.
66. The parties provided little evidence of social recognition of the relationship. They provided supporting statements (handwritten statements and Form 888 Statutory Declarations) from Azeb Tlahun Tesfay and Temnit Tesfay Araya. Temnit Tesfay Araya's statements indicate she was present at the parties' first wedding and attests to her belief that the relationship is genuine. The review applicant indicated Ms Araya is her former sister-in-law who was divorced from her brother around two years ago. Azeb Tlahun Tesfay's statements do not indicate she has spent time with the parties together but indicate that she knows both parties and believes them to be husband and wife.
67. Miss Hadush testified to having been present at both weddings and to having spent time with the parties on both visits by the review applicant to Ethiopia. However, the Tribunal notes her evidence about the amount of time the review applicant spent in Ethiopia and the time she stayed at the visa applicant's home in Shire. This casts doubt on the level of time the parties had spent with the visa applicant's family in Ethiopia.
68. The Tribunal was concerned by the lack of supporting testimony from members of the review applicant's family. While the Tribunal accepts that it may be difficult for parties who are not

living in the same country to gather significant amounts of documentary evidence supporting their account of the relationship, such a restriction should not apply to obtaining testimony from family and friends who can support the parties account of the development and status of the relationship. On the parties' testimony several of the review applicant's family members have met or spoken with the visa applicant, including through him seeking permission to marry her. Further, several family members attended the wedding in 2013. The only supporting testimony from the review applicant's family was the statement of her former sister-in-law provided in 2016. Given the length of the relationship, the claimed history of the parties and the claimed lack of other available documentary evidence it is reasonable to expect the parties would have been in a position to provide more evidence from family members, including in support of the current status of the relationship.

69. The parties claimed to have travelled together in 2013 following the wedding. The review applicant stated they took photos but their camera was stolen. They provided a translation of a police report dated 16 December 2016 and signed by the Chief Commander of Western Zone Police Officer. The letter provides confirmation that the parties' camera was stolen on 15 February 2013. The Tribunal notes it does not appear that the letter was provided on official letterhead. However, as there is no information before the Tribunal that the letter is not genuine, the Tribunal accepts it as evidence of the theft of the camera and places no weight on the lack of photos of the 2013 trip taken by parties in Ethiopia.
70. While the Tribunal does not place weight on the lack of documentary evidence of the 2013 "honeymoon" trip, the Tribunal remains concerned with the lack of documentary evidence to support their account of the later trip in 2018. The Tribunal notes that the only evidence from this trip was the marriage certificate and the studio photos of the parties with three others. The Tribunal notes that this trip occurred in 2018 after the delegate's decision was made and after the application for review to the Tribunal. As such the review applicant was on notice of the sort of material which may be submitted to assist in the assessment of the application and with the issues raised as to the deficiency of information outlined in the delegate's decision. There is also little evidence, other than the small number of photographs submitted, of the basis on which the parties plan and undertake joint social activities when they have been together in Ethiopia. In such circumstances the limited nature of material submitted casts doubt on the account of the trip provided by the parties.
71. Given this, the Tribunal places weight on the lack of any evidence of time spent together including the limited evidence from family and friends in Ethiopia who spent time with the couple there, or family and friends elsewhere, who can attest to the history of the relationship and its current status. In this regard the Tribunal notes that the evidence of Miss Hadush indicated she spent little time with the parties together and was in some respects inconsistent with the parties own evidence, as put to the review applicant.
72. Considering all the information provided to the Tribunal, while there is some evidence to support the existence of the relationship at the time the application was made, the Tribunal finds on the evidence available that the social aspects of the relationship are not such as would suggest a genuine and continuing de facto relationship at the time of application and genuine married relationship at the time of decision.
73. *Nature of the parties' commitment*
74. The Tribunal has had regard to the evidence provided in relation to the nature of the parties' commitment to one another including the duration of the relationship, the length of time they have lived together, the degree of companionship and emotional support they draw from each other, and whether they see the relationship as long-term.

75. The parties claim to have been married since January 2013. They claim to have been in a relationship since late 2012. At that time they had been in contact with each other since reconnecting on Facebook in 2011. The Tribunal acknowledges the parties have known each other for a significant period and have maintained some contact during that period. However, including the visit where the parties met in person again in late 2012 the review applicant has made two trips to Ethiopia. The visa applicant has not travelled to Australia. The parties have spent at most five months in the same country. Their evidence is that they did not spend all of that time together.
76. The parties claim to speak to each other regularly. The review applicant said they speak at least four times a week. The parties provided limited evidence of ongoing contact when they are not together in Ethiopia. They provided a number of printed cards and stickers; however, these are untranslated and, as it is unclear what they relate to, the Tribunal is unable to place weight on them. The parties also provided handwritten notes in English from the visa applicant to the review applicant dated 3 December 2013, 10 February 2014 and 3 April 2014. The Tribunal accepts these as evidence of some communication during those periods.
77. The parties provided two emails from the review applicant to the visa applicant; however, the emails indicate they were sent in March but do not indicate which year. The parties also provided what appears to be a printout of phone or text records but they do not appear to be official records and the date of the calls or texts is not evident. Further, there is a document marked "Conversation started April 3, 2014" which includes records of messages between the parties from April 2014 through to September 2015 and show 45 messages between the review applicant and visa applicant. The review applicant provided receipts for phone top-ups in Australia but these do not evidence communication with the visa applicant. The review applicant provided printouts of a call history indicating calls to the visa applicant from September 2017 to July 2018. As these records are not in a form that enables the Tribunal to identify the source of the material, the Tribunal does not place significant weight on them; however, the Tribunal accepts them as evidence of claimed contact between the parties during this period.
78. There was a lack of evidence for the periods of the relationship where one or both of the parties were in Ethiopia which would support the relationship as a genuine and continuing de facto or spousal relationship. In particular, there was a lack of evidence supporting the parties' account of how they first made contact and how the relationship developed to marriage. These were concerns raised in the delegate's decision and raised with the review applicant at the hearing. No further evidence was submitted to the Tribunal in this regard.
79. While the parties claimed to have been in a committed relationship since late 2012 and to have plans to build a life together in Australia, they did not provide any evidence of having provided support or companionship over the claimed period of the relationship. The evidence available does not support a finding that their circumstances are indicative of a couple who provide support and companionship to each other or see their relationship as long-term.
80. *Any other relevant factors*
81. The Tribunal notes that it has provided the parties with several opportunities to provide additional information in support of their application. At the hearing, the Tribunal stressed to the review applicant the need to consider submitting additional evidence to support the application, including where the review applicant indicated to the Tribunal that documentary evidence was available. The Tribunal has carefully considered all the material the review applicant has submitted but notes that very little additional information was submitted which may assist the Tribunal to be satisfied that the criteria for the grant of the visa are met.

82. The Tribunal is concerned that there is a lack of evidence supporting the parties' account of the nature and conduct of the relationship for the periods where both of the parties were in Ethiopia; this includes a lack of evidence supporting their account of how they first met and maintained contact and how the relationship developed to marriage. There was also a lack of evidence to support the maintenance of communication between the parties when they were apart. This raises concern regarding the genuineness of the relationship at the time the application was made.
83. Further, and as outlined above, the Tribunal is concerned about inconsistencies in the evidence which was available, which cast doubt on the credibility of the parties' account of the relationship and the time spent together in Ethiopia. The explanations provided by the review applicant for these inconsistencies were vague and did not allay the Tribunal's concerns.
84. *Conclusion of de facto criteria at time of application*
85. In assessing whether the relationship met the definition of a de facto relationship at the time of application the Tribunal has considered all the circumstances of the parties and the evidence submitted by the parties. The Tribunal has also had regard to the circumstances of the relationship subsequent to the filing of the application, including the fact the parties validly married in December 2017. While the second visit to Ethiopia and the second marriage of the parties lends evidentiary support to their claim to have been in a de facto relationship at the time the application was made, having regard to all the evidence the parties have failed to satisfy the Tribunal that the criteria for a de facto relationship were met at the time of application.
86. In view of all the above, the Tribunal is not satisfied by the parties' evidence provided to the Tribunal, or that they demonstrate a sound knowledge of each other's lives which is commensurate with a couple in a genuine and ongoing de facto or spousal relationship.
87. The Tribunal has considered all aspects of the parties' relationship including the financial and social aspects, the nature of the household and the parties' commitment to each other. It has considered the evidence individually and as a whole. The Tribunal finds that the parties know each other personally, have spent some time together, have socialised in Ethiopia and have communicated with each other. However, the Tribunal is not satisfied that the parties were in de facto relationship at the time of application.
88. Given the inconsistent evidence and lack of supporting documentary evidence, the Tribunal is not satisfied by the parties' evidence about their commitment to the relationship.
89. Based on the evidence before it the parties have not satisfied the Tribunal that at the time of the application the parties have a mutual commitment to a shared life to the exclusion of all others. The Tribunal is not satisfied on the evidence that the parties were in a genuine and continuing relationship at the time of application. Further the Tribunal is not satisfied on the evidence that the visa applicant and review applicant live together or not separately and apart on a permanent basis at the time of application. The Tribunal is satisfied the parties are not related by family.
90. Having regard to the totality of the evidence before it, and on the basis of the above the Tribunal is not satisfied that the requirements of s.5CB(2) were met at the time the visa application was made.
91. On the basis of the above the Tribunal is not satisfied that the requirements of s.5CB were met at the time the visa application was made.

92. The visa applicant claimed to be married to the review applicant at the time the application was made. That marriage was invalid. Therefore there is no information before the Tribunal that the visa applicant intended to marry the review applicant at the time of application, therefore the visa applicant does not meet the alternative criteria in cl.309.211(3).
93. Therefore the applicant does not meet cl.309.211.
94. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.
95. The Tribunal notes that in light of the findings above it is not necessary for the Tribunal to consider the time of decision criteria.
96. As the visa applicant has not satisfied the primary criteria for the grant of the visa, it follows that the secondary applicants do not satisfy cl.309.321(a) of Schedule 2 to the Regulations.
97. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

98. The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Simone Burford
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.
- Note 1* See regulation 2.03A for the prescribed criteria applicable to de facto partners.
- Note 2* The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.
- Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits the regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.
- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or
- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
- (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
- (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
- (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.

(4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).